

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

In Re: Rhonda S. Torres

Case No. 17-11880K  
Chapter 13

Debtor(s)

**Notice of Motion**

**NAME & ADDRESS OF  
APPLICANT:**

JOHN D'AMATO LAW OFFICES  
4245 Union Road, Ste 208  
Cheektowaga, NY 14225  
(716) 706-0000

**DATE, TIME, AND  
PLACE OF HEARING:**

November 27, 2017 at 12:00 p.m.  
United States Bankruptcy Court, Part I  
Olympic Towers  
300 Pearl Street  
Buffalo, New York 14202-2501

**RELIEF DEMANDED &  
GROUNDS THEREFORE:**

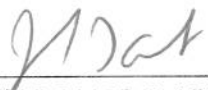
- (1) Order avoiding judgment lien(s).  
11 U.S.C. Sections 522(f); and
- (2) Order granting such additional relief  
which the Court deems just and proper.  
11 U.S.C Section 105.

Please take notice of the following information with respect to the above-captioned debtor(s):

Name: Rhonda S. Torres

Last four digits of the taxpayer identification number: 8108

DATED: 11-8-17

  
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JOHN D'AMATO LAW OFFICES  
John D'Amato, Esq.  
4245 Union Road, Ste 208  
Cheektowaga, NY 14225  
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Case No. 17-11880K  
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In Re: Rhonda S. Torres

Debtor(s)

**MOTION PURSUANT TO 11 U.S.C. SECTION 522(f)**

1. The undersigned Debtor(s) commenced this case on 9/8/2017, by filing a voluntary petition for relief under chapter 13 of title 11, United States Code.
2. This motion is filed pursuant to 11 U.S.C. § 522(f) to avoid and cancel the judicial lien(s) identified immediately below against Rhonda S. Torres held by judgment creditor(s) on real property used as the Debtor(s) residence located at **53 Simson Street, Tonawanda, NY 14150**, and owned by debtor and her father Richard Smith.

Creditor Name & Address	Other Pertinent Information
Portfolio Recovery Associates, LLC 120 Corporate Boulevard Norfolk, VA 23502	Court: Tonawanda City Record Date Amount: \$ 2,984.54 Approx. Current Balance: \$ 1 or more Date Filed: 03-28-2014 Book: Q269 / Page 4282 Attorneys: Hedgeman Catherine M. Debtors: Rhonda Torres

3. In the bankruptcy petition, the Debtor(s) have asserted the homestead exemption of \$82,775.00, pursuant to *Law*.
4. Please note exhibits referred to in this Motion can be viewed on-line at [www.ecf.nywb.uscourts.gov](http://www.ecf.nywb.uscourts.gov) [also known as the "Western District of New York-Document Filing System" (i.e. Pacer) or requested by facsimile (716-706-0013) or U.S. mail to the undersigned counsel.
5. The Debtor(s) purchased the residence in year 2010 and since that time the ownership of this property has not changed. See Exhibit A, Deed.
6. The current fair market value of the Debtor(s) residence is \$81,633.00 according to the tax bill dated 2016, a copy of which is attached hereto as Exhibit B.

7. That the balance owing on the mortgage(s) and/or other non-judicial liens as of approximately relating to this residence is documented in Exhibit C (Non-Judicial Liens Against Residence) and is summarized below:

Creditor(s)	Amount Due
Rushmore Loan Management Services	\$58,000.00 or more


8. Pursuant to 11 U.S.C. Section 522(f)(2)(A), a mathematical formula determines if a judgment lien is considered to impair a homestead exemption. This formula and its application to the instant case, is identified immediately below:

	Formula – 11 U.S.C. Section 522(f)	Application of Formula to the instant case
(i)	[A judgment lien is considered to impair an exemption to the extent that] the sum of the judgment liens,	\$1 or more
(ii)	all other liens on the property; and	\$58,000.00 or more
(iii)	the amount of the exemption that the debtor(s) could claim if there were no liens on the property	\$82,775.00
	<b>EXCEEDS</b>	
(iv)	the value that the Debtor(s) interest in the property would have in the absence of any liens.	\$81,633.00

9. Therefore, in the instant case, the existence of the above-referenced creditor's judgment lien(s) on Debtor(s) real property impairs the Debtor(s) homestead exemption.

**WHEREFORE**, Debtor(s) pray for an Order against the above-referenced creditors for the cancellation and avoidance of the judicial liens on their residential real estate, and for such additional or alternative relief as may be just and proper.

Date: 11-8-17

  
**JOHN D'AMATO LAW OFFICES**  
John D'Amato, Esq.  
4245 Union Road, Ste 208  
Cheektowaga, NY 14225  
(716) 706-0000

### CLIENT CERTIFICATION

I, Rhonda S. Torres, hereby certify, under penalty of perjury, that I have carefully read and reviewed the annexed Notice of Motion and Motion Pursuant to 11 U.S.C. Section 522(f), and that all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding.

Dated: 11-8-17

  
Rhonda S. Torres